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Serial number and name of taluk.	The number of applications for the lease of waste lands received by Tahsildars in the Malabar district under setion 52 of the Malabar Tenancy Act from 1st January 1954 to 15th August 1955.	The number of applications sanctioned.	The details thereof.	Remarks.
(1)	(2)	(3)	(4)	(5)
7 Ernad ..	119	..	One hundred and seventeen applications were rejected as those petitions related to Forest areas which do not satisfy the conditions laid down by the Government. In one case, notice has been issued to the owner to get the land cultivated. Notice time has not expired. The remaining one case is under enquiry.	
8 Walluvanad ..	..	..	....	
9 Palghat ..	..	..	....	
10 Ponnani ..	..	..	....	
Total ..	267	..	....	

APPENDIX V.

[Vide answer to starred question No. 3112 asked by Sri N. K. Palanisamy at the meeting of the Legislative Assembly held on 30th January 1956, page 325 supra.]

(*a*) The Government of India have split up the Hindu Code into separate parts for the purpose of facilitating its discussion and passage in Parliament. In 1954, this Government offered their views in respect of a part of the Code, viz., the Hindu Succession Bill, 1954, at the request of the Government of India.

(*b*) This Government were in general agreement with the provisions of the Hindu Succession Bill, 1954, and suggested certain additions and deletions to the provisions contained in the clauses of the Bill besides some redrafts of certain clauses to the Government of India as detailed below :—

Clause 9.

The following suggestion for redraft of this clause was recommended for consideration by the Government of India :—

" As it stands, the first entry is given preference only with reference to the second entry. This will lead to complications.

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Supposing second entry heirs do not exist, but the first and third line exist. The language is not sufficient or clear enough to give the first entry heirs preference over the third entry heirs. The clause should be worded " those standing in the first entry under clause II shall be preferred to those standing in the subsequent entries ", or it might be worded as " those standing under the entries in each clause shall be preferred to those standing in entries below."

Clause 12.

This clause was recommended to be recast as follows :—

" In the absence of any preferential heir specified in clause I or clause II of the Schedule agnates related to the deceased within five degrees shall be entitled to succeed in accordance with the rules set out in this Act.

Clause 13.

This clause was recommended to be recast as follows :—

" In the absence of any preferential heir or agnate, cognates related to the deceased within five degress shall be entitled to succeed in accordance with the rules set out in this Act."

Clause 26.

Sub-clause (1) of this clause is likely to give room for some controversy. It states, among other things, that if a female acquires *any* property, movable or immovable, in lieu of maintenance or arrears of maintenance, it shall be held by her as full owner and not as a limited owner. Widows of deceased coparceners, who do not get a right to demand partition of joint family property by reason of their husbands having died before Central Act XVIII of 1937 came into force, are entitled to maintenance as against joint family property. There are instances where such widows are given some properties to be enjoyed by them in lieu of maintenance. It is a case of acquisition of property in lieu maintenance as contemplated in clause 26 (1). Though joint family property is excluded from its applicability, it is possible to contend, by reason of the very wide language, particularly the expression " any property " used in clause 26 (1), that if, after the coming into force of this Bill, a widow is given some items of joint family property of her deceased husband to be enjoyed by her in lieu of her maintenance, she should be deemed to become the full owner of those items.

There is yet another point in clause 26 (1). It does not say that its applicability is subject to contract between the parties or that it is applicable notwithstanding any contract to the contrary. If, after the coming into force of this Bill, the widow and the other preferential heirs enter into a *bona fide* compromise whereby the widow is given the whole property or a share larger than the

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lawful share due to her, subject to the condition that she should enjoy the property as a maintenance holder, without any right of alienation the question would arise whether the contract should prevail or not. Perhaps, the correct view may be that no one can contract out of a statute. But it seems desirable to put the matter beyond controversy.

Clause 32 (2) (*b*).

The standard of virtuousness may vary from person to person and it is by no means possible to fix a minimum standard of virtuousness so as to entitle a disciple to claim the right. The word ' virtuous ' may be omitted.

Clause 37.

In the notes on clauses in respect of this clause it is stated that where any immovable property or any business devolves upon male and female heirs, this clause would enable the male heirs, if they so desire, to buy off compulsorily the share of the female heirs. This does not seem to follow easily from a reading of the clause. The clause may be recast so as to bring out the object clearly.

Clause 39.

No doubt, unchastity which is a disqualification for a wife to succeed to her husband's property is not a disqualification for her to succeed to her son's property or father's property or to the properties of others to whom she is a heir. This cannot be said to be an anomaly if we give due regard to the principles on which the rule of disqualification is based. According to Hindus, even as a matter of that, according to all other religionists, chastity in a wife is the first thing required. That principle does not apply to an unchaste woman claiming to be a heir to others. It is presumably in that view the framers of this Bill have thought it necessary to give a statutory force to the disqualification so far as the right to inherit the husband's property is concerned. So long as Hindus continue to regard marriage as a sacrament and not as a mere contract, the disqualification provided for in clause 39 may be allowed to continue.

The proviso to this clause was recommended to be omitted in view of the following suggestion :—

" The proviso is too stringent. It is well known that a Hindu does not very often go to courts to expose his wife's unchastity. The more respectable a man is, the less he is likely to resort to courts. The unchaste wife does not mind being dragged to courts. But the husband responsible for the future of his children and also for his position in the eyes of the public does not resort to court for a mere declaration to that effect. An unchaste wife may not care to get maintenance. It is doubtful whether even a declaration suit about the unchastity of his wife by a husband will lie at

all. It is not a thing relating to his status or his rights to property. There is no grave injury or loss caused by reason of the removal of the clause because the courts are very much averse to finding unchastity at the instance of prospective heirs. In the absence of direct evidence, the courts hold it as not proved, and direct evidence is equally disbelieved on the ground that it is improbable. The existence of such a proviso will be a great danger in the hands of unscrupulous unchaste woman. The proviso as it stands may be removed.''

Clause 41.

This Government recommended to the Government of India the following suggestion for suitably amending this clause :—

'' Section 41 ought to be reworded as relating to a person who has been convicted of the offence of murder, or the offence of the abetment of the commission of murder, by a Criminal Court. To do so otherwise, viz., to leave the section as it stands, would be to invite a fruitful source of discord and confusion. Murder is an offence with a precise and technical degree of definition under the Indian Penal Code. It would be most undesirable that Civil Courts should proceed into the question whether a man who has been acquitted of murder by a Criminal Court, for instance, or who was never been charged with the offence, has really committed murder or not. But if the section is left as it stands, an argument may well be raised that even the acquittal does not bind the Civil Court, and that it should arrive at an independent conclusion on the evidence.''

Clause 42.

This Government agreed with the following views of Sri S. Varadachariar, retired Judge, Federal Court :—

'' I am not satisfied as to the propriety of making an exception in favour of descendants who may be reconverted to Hinduism. The condition that they should have been reconverted to Hinduism before the succession opens may, no doubt, minimise the chances of opportunist or pretended conversions for obtaining an inheritance. But the position would in any event, be anomalous if the reconversion should take place in the second or third generation after the conversion. It would certainly seem strange to a Hindu that a heritable relationship should suddenly spring up between two families whose members had for two generations belonged to different religions. It is to say the least doubtful if members of the family who had remained Hindus can claim to succeed to the property of the person who had been reconverted. Their relationship is not the result of a form of marriage *known to the Hindu Law* so far as the intervening convert members are concerned. I would therefore omit the words ' unless such children or descendants are Hindus at the time when the succession opens.''

They expressed to the Government of India that the reasons given in the ' notes on clauses ' under this clause for the inclusion

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of the words " unless such children or descendants are Hindus at the time when the succession opens " do not in any way meet the objection pointed out by Sri S. Varadachariar. There is no question of reconversion in the case of persons born of converts from Hinduism. At the time of their birth, they are governed by the religion of their parents, that is the religion to which their parents converted themselves. If such offsprings were to adopt Hinduism, it is a case of conversion and not reconversion of Hinduism. The legal concept underlying the principle of disqualification on account of conversion is that the convert becomes civilly dead from the moment of conversion and the children born to such a person are incompetent, in any conception whatsoever, to restore the old relationship so as to claim right of succession by their conversion to Hinduism. In other words, the children of the convert from Hinduism cannot acquire any right of succession to Hindus by their mere conversion to Hinduism. Their status to succeed should necessarily depend upon the status of their parents, for it is only through the parents they can claim the right of succession. This Government therefore recommended the omission of the words " unless such children or descendants are Hindus at the time when the succession opens " as pointed out by Sri S. Varadachariar.

APPENDIX VI.

[Vide item IV on page 331 supra.]

COMPOSITION OF THE COMMITTEE ON SUBORDINATE LEGISLATION.

(*Constituted on the* 14*th February* 1955.)

CHAIRMAN :

Sri S. S. KOLKEBAIL.

MEMBERS :

Sri T. GANAPATHY.
Sri V. GOPALA GOUNDER.
Sri K. C. GOPALAN UNNI.
Sri M. JAGANNATHAN.
Sri P. S. KRISHNASWAMY AYYANGAR.
Sri K. P. KUTTIKRISHNAN NAIR.
Sri K. RAJARAM.
Sri K. M. SEETHI SAHIB.
Sri C. SUBRAMANIAM, Minister for Finance.

SECRETARIAT :

Sri T. HANUMANTHAPPA—*Secretary.*
Sri G. M. ALAGARSWAMY—*Assistant Secretary.*

TRUTH ALONE TRIUMPHS